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UNCLAS WELLINGTON 000538

SIPDIS

STATE FOR EB/CIP FOR AHYDE AND EAP/ANP FOR TRAMSEY  
STATE PASS TO USTR FOR BWEISEL AND LCOEN  
COMMERCE FOR 4530/ITA/MAC/AP/OSAO/ARI BENAISSA  
COMMERCE FOR 6920/ITA/OTEC/MYLES DENNY-BROWN

E.O. 12356: N/A

TAGS: [ECPS](#) [ECON](#) [ETRD](#) [NZ](#)

SUBJECT: LAWSUIT MAY DELAY DECISION ON MOBILE TERMINATION  
RATES IN NEW ZEALAND

REF: (A) WELLINGTON 461; (B) 04 WELLINGTON 882; (C) 04  
WELLINGTON 598

1. New Zealand's two mobile-phone service providers have gone to court to challenge the Commerce Commission's recommendation that the government begin regulating land-to-mobile phone charges. The court case throws into uncertainty what had been an expected decision by the Minister of Communications to follow the commission's advice and oversee regulation of mobile termination rates. The court review could take weeks or months to complete and could be further complicated by the outcome of the coming national elections.

2. The Commerce Commission -- New Zealand's anti-monopoly watchdog -- in a final report issued June 9 took aim at the now unregulated fees that mobile telephone networks charge fixed-line operators to complete calls on their mobile networks. In New Zealand, these rates are among the highest in the OECD, the commission noted in its recommendation to the Minister of Communications (ref A). The commission expected that regulation would increase competition in the domestic fixed-to-mobile market, resulting in lower retail prices for fixed-to-mobile calls. Regulation also might reduce the charges paid by U.S. residents when making calls to New Zealand. AT&T and other U.S. companies have protested increasing fees on calls they pass to mobile phones in the country.

3. Vodafone New Zealand on June 29 filed papers in the High Court in Auckland seeking a judicial review of the commission's recommendation. A week later, Telecom New Zealand joined the proceedings. In its court filing, Telecom contended that the Commerce Commission had failed to take sufficient account of public submissions during its investigation into mobile termination rates.

4. The minister, David Cunliffe, can accept the commission's recommendation, reject it or ask the commission to reconsider its recommendation. However, a commission official said July 11 that, because of the court case, the minister is uncertain when, or if, he will issue a decision. Because a court ruling could change or restrain his decision, implementation of any decision he makes could be delayed until the court case is resolved, the official said.

5. While other industries have previously mounted court challenges to Commerce Commission decisions, this is the first case to be filed against the commission under the current telecommunications regulatory regime. That regime came into force in 2002 with the establishment of a telecommunications commissioner within the Commerce Commission.

6. Comment: Potential regulation of mobile termination fees could be further delayed -- or doomed -- by the outcome of coming national elections. They are as yet unscheduled but must be held by September 24. The opposition National Party has indicated that it might oppose regulation of termination rates. Its communications spokesman told the New Zealand Herald that, if elected, the party would look at the issue "from a fresh perspective." National and the ruling Labour Party have been running neck-and-neck in the opinion polls. At this point, it seems very possible that neither party will attain a clear majority in Parliament, requiring the winner to seek a coalition partner.

SWINDELLS